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June 18, 2013

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, DC 20554

Re: ***Ex Parte Presentation in:***

WC Docket No. 11-10, *Modernizing the FCC Form 477 Data Program*  
WC Docket No. 07-38, *Development of Nationwide Broadband Data*  
WC Docket No. 08-190, *Service Quality, Customer Satisfaction and Data Gathering*  
WC Docket No. 10-75, *Free Press Request to Review Form 477 Data*  
WC Docket No. 10-132, *Review of Wireline Competition Bureau Data Practices*  
WT Docket No. 10-131, *Review of Wireless Telecommunications Bureau Data Practices*

Dear Ms. Dortch:

On Friday, June 14th, I spoke by telephone with Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel, regarding the draft Order in the above-captioned dockets. At that time, I reiterated Free Press's disappointment with what we understand to be that item's contents. Despite the well documented need for the agency to collect and disseminate better data to facilitate competition analysis, the draft item does not adopt any of the recommendations made in the National Broadband Plan ("Plan") or by the Department of Justice concerning this matter.

The Commission's inadequate broadband data collection efforts helped catalyze a 2007 proceeding that resulted in substantial reforms to Form 477 – many suggested by Free Press.<sup>1</sup> The Commission moved to a Census-based reporting system and began collecting actual subscriber numbers. But its collection of subscriber information at the Census Tract level was not granular enough, especially in rural areas; and it did not require pricing data. A 2008 Order included a Further Notice tentatively concluding that the Commission should (i) collect pricing data to facilitate competition analysis and (ii) move to more granular block-level reporting.

The Plan affirmed these tentative conclusions, recommending that the Commission "collect, analyze, benchmark and publish detailed, market-by-market information on broadband pricing and competition."<sup>2</sup> It also called for the Commission to implement a process to make additional data available to academic researchers and others, subject to appropriate restrictions to protect confidentiality of competitively sensitive materials.

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<sup>1</sup> See Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, WC Docket No. 07-38, Order on Reconsideration, 23 FCC Rcd 9800 (2008).

<sup>2</sup> Federal Communications Commission, Connecting America: The National Broadband Plan, Omnibus Broadband Initiative, at xi, 44 (2010).

The Department of Justice filed comments in the Plan proceeding, similarly calling on the Commission to collect pricing data and noting that while “the Commission is already gathering detailed information on broadband deployment and subscribership,” it needs “additional detail on the pricing plans being offered, and on subscriptions to those plans...for the purpose of assessing broadband competition.”<sup>3</sup>

The draft item will fail utterly if it fails to collect pricing data. Were it true that such collection is as complex as some providers claim, that would be no excuse for inaction. Even in the absence of a market- and plan-specific approach, however, the Commission could conduct pricing surveys similar to the Media Bureau’s annual survey in the multichannel video market.

The draft order also fails to adopt the Plan’s recommendation to make Form 477 data available to researchers pursuant to a protective order, even though the agency routinely makes confidential and highly confidential data available to outside parties under such orders.

Finally, while the pending item may pick up NTIA’s soon-to-be discontinued efforts collecting broadband availability data at the Census block level, it evidently abandons NTIA’s practice of using road-segment reporting for geographically large census blocks in rural areas. If the immediate need for the data were verification of Connect America Fund eligibility, then the Commission should increase the granularity of reporting in currently identified unserved areas, not decrease it. In remote rural areas, census blocks are often one and the same as counties, sometimes hundreds of square miles in area. Yet these areas have already been identified by the NTIA, and the CAF is based on a cost-model and right-of-first refusal – making such data less important because applicants for support make their own cases for areas being served or not.

Whatever the perceived need for actions like this in the short term, there should be no rush to close the door on these important questions. The Commission should pull the item from the agenda in the absence of substantial improvements to the areas outlined above. If there is an immediate need to continue NTIA’s collection, then the Commission should issue a narrow order on that aspect while seeking further comment on the other matters in a new Further Notice.

Respectfully submitted,

/s/ Matthew F. Wood  
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cc: Priscilla Delgado Argeris

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<sup>3</sup> See *Ex Parte* Submission, United States Department of Justice, GN Docket No. 09-51, at 19-20 (filed Jan. 4, 2010).